3. Plaintiff is the owner, holder for value and bearer of three interest coupons formerly attached to said bond in the same form as the coupon referred to in paragraph 2 hereof, but maturing on April 15, 1933, October 15, 1933, and April 15, 1934, respectively.

4. Under and pursuant to the laws of the United States, namely: an Act approved March 14, 1900 (31 Stat. 45), which was in force on October 24, 1918, at the time of the issuance of said bond, a dollar in gold consisted of twenty-five and eight-tenths (25 8/10) grains of gold, nine-tenths (9/10) fine.

[fol. 3] 5. The aforesaid bond and circular contained provisions that all or any of the bonds of its series might be redeemed at the pleasure of the United States on and after October 15, 1933, at par and accrued interest, in United States gold coin of the standard of value on the date of issuance, and that from the date of redemption designated interest on bonds called for redemption should cease. On October 12, 1933, the defendant, through and by the Secretary of the Treasury, in Treasury Department Circular No. 501, a copy of the relevant provisions of which is attached hereto and made a part hereof, marked "Schedule D," called for redemption on April 15, 1934, a part of said issue of Fourth Liberty Loan 4¼% Gold Bonds of 1933-1938, including all outstanding coupon bonds bearing the serial numbers the final digit of which was 9, 0, or 1, and therefore including the aforesaid bond.

6. On March 11, 1935, plaintiff duly presented to the defendant at the Treasury Department, Washington, D. C., the three interest coupons referred to in paragraph 3 hereof, and demanded payment thereof in gold dollars, each containing twenty-five and eight-tenths (25 8/10) grains of gold, nine-tenths (9/10) fine. The defendant refused payment of said coupons except in legal tender currency.

7. Thereafter and on March 11, 1935, plaintiff duly presented said bond to the Treasurer of the United States, Washington, D. C., in accordance with said Act of September 24, 1917, as amended, said Treasury Department Circular No. 121, and said Treasury Department Circular No. 501, and demanded of said defendant that it redeem said bond by the payment of fifty gold dollars, each containing twenty-five and eight-tenths grains of gold, nine-tenths fine.

The defendant refused to redeem said bond in accordance with its terms, or in any manner except by the payment of fifty dollars in legal tender currency. Plaintiff thereupon refused to accept said currency, or permit the redemption of said bond, and is still the owner, holder and bearer of said bond.

[fol. 4] 8. Thereafter, and on March 11, 1935, plaintiff duly presented to the defendant at the Treasury Department, Washington, D. C., the aforesaid interest coupon due October 15, 1934, in accordance with said Act of September 24, 1917, as amended, and said Treasury Department Circular No. 121, and demanded payment thereof in the sum of one dollar and seven cents either in gold coin or legal tender currency. Defendant thereupon refused payment of said coupon, on the ground that the bond to which it had been attached had been previously called for redemption.

9. Plaintiff is informed and believes that defendant's refusal to redeem said bond and pay the three interest coupons referred to in paragraph 3 of this petition in accordance with its terms was based on the ground that the Joint Resolution of the Seventy-Third Congress, approved June 5, 1933, (C. 48, 48 Stat. 112) nullified the provisions of said bond requiring payment in gold. Plaintiff says that said Joint Resolution, insofar as it attempted to override the obligation created by the aforesaid bond and coupons, was beyond the power of Congress to adopt, and was unconstitutional and void, and violated the provisions of the Fifth Amendment, and of Section 4 of the Fourteenth Amendment, to the Constitution of the United States.

10. Plaintiff says, therefore, that defendant had no right to call said bond for redemption except on the payment of fifty gold dollars, each containing twenty-five and eight-tenths grains of gold, nine-tenths fine; and that the action of defendant in issuing said Treasury Department Circular No. 501 and tendering to plaintiff fifty dollars in legal tender currency did not constitute a redemption of said bond, and the obligations of said bond are still in full force and effect.

11. Plaintiff says that the defendant has publicly announced that it will not pay the Fourth Liberty Loan Bonds [fol. 5] in gold dollars of the standard of value existing on

the date of their issuance, and has thereby forfeited, while such repudiation continues, any rights or privileges conferred on it by the terms of said bonds, including the right or privilege to redeem the said bonds before the maturity thereof.

12. Plaintiff says that the defendant, by its refusal to pay in United States gold dollars containing twenty-five and eight-tenths grains of gold nine-tenths fine the three interest coupons referred to in paragraph 3 hereof repudiated its obligations on the aforesaid bond, and forfeited any rights or privileges conferred on it by the terms of said bond, including the right or privilege to redeem the said bond before the maturity thereof.

13. Plaintiff says that under authority of the Gold Reserve Act of 1934 the President of the United States, on January 31, 1934, fixed the weight of the gold dollar to be fifteen and five twenty-firsts (15 5/21) grains, nine-tenths (9/10) fine, instead of the former weight of twenty-five and eight-tenths (25 8/10) grains, nine-tenths (9/10) fine. Plaintiff says further that if its said bond is redeemable in legal tender currency, or in gold dollars of the present standard of value, said bond will be of less value to him than if it is redeemed in gold dollars of the standard of value formerly existing, or if it is irredeemable before its maturity date on October 15, 1938; and that obligations of the United States due in three years and seven months are now selling on a 1¼% basis, and would be valued at approximately 110.5% of par, if bearing interest at the rate of four and one-quarter per cent (4¼%), whereas bonds validly called for redemption at par are not worth more than par after the date of redemption.

14. Plaintiff is the sole owner of the bond and coupons referred to and of the claim herein made, and the only person interested therein. There has been no assignment or [fol. 6] transfer of this claim, or of any interest therein, and plaintiff is justly entitled to recover the amount herein claimed from the Government of the United States, after allowing all just credits and offsets.

15. No action upon the plaintiff's claim has been had by or before Congress, or, except as aforesaid, any Executive Department of the Government.

16. Plaintiff is, and at all times herein mentioned was, a citizen of the United States, has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

17. Wherefore plaintiff prays judgment against defendant in the sum of One Dollar and Seven Cents ($1.07), the face amount of the aforesaid coupon described in paragraph 2 hereof, which sum is now due and owing by the United States to plaintiff, and no part of which has been paid.

18. The address of plaintiff is Dixie Terminal Building, Cincinnati; the address of the attorney for plaintiff, Robert A. Taft, is 420 Dixie Terminal Building, Cincinnati, Ohio.

Robert A. Taft, Attorney for The Dixie Terminal Company.

Duly sworn to by Robert A. Taft. Jurat omitted in printing.

[fol. 7] SCHEDULE "A" TO PETITION

$50. $50 A00055321*.

Fourth Liberty Loan

4¼% Gold Bond of 1933-1938

The United States of America for value received promises to pay to the bearer the sum of Fifty Dollars on October 15, 1938, and to pay interest on said principal sum at the rate of four and one-quarter per cent per annum from the date hereof on April 15 and October 15 in each year until the principal hereof shall be payable upon presentation and surrender of the interest coupons as they severally mature, at the Treasury Department, Washington, or at the holder's option, at any agency or agencies in the United States which the Secretary of the Treasury may from time to time designate for the purpose. The principal and interest hereof are payable in United States gold coin of the present standard of value. This bond is one of a series of four and one-quarter per cent gold bonds of 1933-1938 authorized by an Act of Congress approved September 24, 1917, as amended and issued pursuant to Treasury Department Circular No. 121, dated September 28, 1918, to which reference is hereby made

for a statement of the further rights of the holders of bonds of said series as fully and with the same effect as if herein set forth. All or any of the bonds of said series may be redeemed at the pleasure of the United States, on and after October 15, 1933, at par and accrued interest as in said circular provided. This bond does not bear the circulation privilege.

Washington, October 24, 1918.

Recorded: J. O.

W. G. McAdoo, Secretary of the Treasury.

Houston B. Teehee, Register of the Treasury.

Act approved September 24, 1917, as amended.

Eight Coupons, April 15, 1935 to October 15, 1938, Attached.

[fol. 8] SCHEDULE "B" TO PETITION

Treasury Department,
Office of the Secretary,
Washington, September 28, 1918.

The Secretary of the Treasury invites subscriptions, at par and accrued interest, from the people of the United States for $6,000,000,000 of United States of America Four and One-Quarter Per Cent Gold Bonds of 1933-1938, of an issue authorized by an Act of Congress approved September 24, 1917, as amended by the Acts of Congress approved April 4, 1918, and July 9, 1918, and supplemented by an Act of Congress approved September 24, 1918, the right being reserved to allot additional bonds up to the full amount of any oversubscription.

Description of Bonds

Denominations:

Bearer bonds with interest coupons attached will be issued in denominations of $50, $100, $500, $1,000, $5,000, and $10,000. Bonds registered as to principal and interest will be issued in denominations of $50, $100, $500, $1,000, $5,000, $10,000, $50,000, and $100,000. Provision will be made for the interchange of bonds of different denominations and of coupon and registered bonds and for the transfer of regis-

tered bonds, without charge by the United States, and under rules and regulations prescribed by the Secretary of the Treasury.

Rate of Interest, Date of Bonds, Maturity and Redemption:

The bonds will be dated October 24, 1918, and will bear interest from that date at the rate of four and one-quarter per cent per annum, payable on April 15 and October 15 in each year. The interest payable on April 15, 1919, will be for 173 days. The bonds will mature October 15, 1938, but the [fol. 9] issue may be redeemed at the pleasure of the United States on and after October 15, 1933, in whole or in part, at par and accrued interest, on any interest day or days, on six months' notice given in such manner as the Secretary of the Treasury shall prescribe. In case of partial redemption the bonds to be redeemed will be determined by such method as may be prescribed by the Secretary of the Treasury. From the date of redemption designated in any such notice, interest on bonds called for redemption shall cease. The principal and interest of the bonds are payable in United States gold coin of the present standard of value.

SCHEDULE "C" TO PETITION

The United States of America

will pay to bearer on October 15, 1934, at the Treasury Department, Washington, or at a designated agency, $1.07, being six months' interest then due on $50 Fourth Liberty Loan 4¼% Gold Bonds of 1933-1938 unless called for previous redemption.

A00055321*. (32)

Houston B. Teehee, Register of the Treasury.

SCHEDULE "D" TO PETITION

Treasury Department,
Office of the Secretary,
Washington, October 12, 1933.

To Holders of Fourth Liberty Loan 4¼ per cent Bonds of 1933-38, and Others Concerned:

1. Notice of Call for Partial Redemption of Fourth Liberty Loan 4¼ per cent Bonds of 1933-38 (Fourth 4¼'s) Before Maturity

1. Pursuant to the provision for redemption contained in the bonds and in Treasury Department Circular No. 121, dated September 28, 1918, under which the bonds were [fol. 10] originally issued, all outstanding Fourth Liberty Loan 4¼ per cent bonds of 1933-38, hereinafter referred to as Fourth 4¼'s, bearing the serial numbers which have been determined by lot in the manner prescribed by the Secretary of the Treasury, are called for redemption on April 15, 1934, as follows:

All outstanding permanent coupon bonds bearing serial numbers the final digit of which is 9, 0, or 1, such serial numbers being prefixed by a corresponding distinguishing letter J, K, or A, respectively;

All outstanding temporary coupon bonds bearing serial numbers the final digit of which is 9, 0, or 1; and

All outstanding registered bonds bearing serial numbers the final digit of which is 9, 0, or 1.

2. Interest on all such outstanding Fourth 4¼'s so called for redemption will cease on said redemption date, April 15, 1934.

3. Fourth 4¼'s bearing serial numbers (and prefix letters) other than those designated are not included in or affected by this call for partial redemption.

III. Optional Exchange Offering

1. Holders of Fourth 4¼'s will be offered the privilege, for a limited period beginning on October 16, 1933, of exchanging all or part of their bonds (whether called or uncalled) at par, for a new issue of 10-12 year Treasury bonds, dated October 15, 1933, and bearing interest from

that date at the rate of 4¼ per cent per annum until October 15, 1934, and thereafter at the rate of 3¼ per cent per annum. The new bonds will mature on October 15, 1945, but may be called for redemption, in whole or in part, at par and accrued interest, on and after October 15, 1943, on four months' notice.

[fol. 11] II. History of Proceedings

On April 20, 1935, the defendant filed a motion to extend time to May 22, 1935, in which to plead.

On April 24, 1935, the plaintiff filed an opposition to said motion and requested that case be placed on the Law Calendar.

On April 24, 1935, the court entered the following order on said motions:

Order

Now on this twenty-fourth day of April, 1935, the motion of the defendant to extend time to plead to the petition to May 22, 1935, and the plaintiff's motion to place the case upon the law calendar for a prompt hearing having been considered, It is Ordered by the Court that the defendant have until May eighth to plead to plaintiff's petition and said motions are otherwise overruled.

III. General Traverse—Filed May 8, 1935

And now comes the Attorney General, on behalf of the United States, and answering the petition of the plaintiff herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

Geo. C. Sweeney, Assistant Attorney General.

IV. Argument and Submission of Case

On March 9, 1936, this case was argued and submitted on merits by Mr. Robert A. Taft, for plaintiff, and by Mr. Assistant Attorney General James W. Morris, for defendant.

[fol. 12] V. Further Proceedings in Case

On April 20, 1936, this court certified certain questions to the Supreme Court.

On June 29, 1936, the mandate of the Supreme Court, dated June 1, 1936, dismissing the certificate was filed in this office.

[fol. 13] VI. **Special Findings of Fact, Conclusion of Law and Opinion of the Court by Littleton, J.**— Filed November 9, 1936

Mr. Robert A. Taft for the plaintiff.

Mr. Assistant Attorney General James W. Morris for the defendant.

Mr. Harry Le Roy Jones was on the brief.

In this action plaintiff seeks to recover in currency of the United States the amount specified in an interest coupon attached to a Fourth Liberty Loan 4¼% Gold Bond in the principal amount of $50 issued pursuant to the Act of Congress of September 24, 1917, Treasury Department Circular 121, September 28, 1918.

The due date of this coupon was October 15, 1934, six months after the date on which the principal of the bond became payable under a call for redemption duly issued by the defendant. This interest coupon provided for the payment of interest therein specified, unless the bond was called for previous redemption. The bond provided that the United States would pay interest on the amount thereof "until the principal hereof shall become payable." The bond and circular, pursuant to which the bond was issued, provided that the bond might be redeemed at the pleasure of the United States in whole or in part, at par and accrued interest, on any interest day or days, on six months' notice, given in such manner as the Secretary of the Treasury should prescribe and "from the date of redemption designated in any such notice interest on bonds called for redemption shall cease."

[fol. 14] Plaintiff contends that the defendant's call for redemption was ineffective because of the Government's refusal to pay the bond in gold and that interest continued to accrue and become payable on the bonds thus called

for redemption. Similar calls for redemption were made by the United States about the same time with respect to gold-clause bonds totaling $8,849,540,000.

Special Findings of Fact

1. March 9, 1935, plaintiff, an Ohio corporation, purchased a bond of the United States in the principal sum of $50, known as the Fourth Liberty Loan 4¼% Gold Bond of 1933-1938, serial number A00055321, and paid therefor $51.75 plus $5.31, accrued interest, totaling $57.06. This bond is in evidence as plaintiff's exhibit 2, and such exhibit and all other exhibits hereinafter mentioned are made a part of these findings by reference. Payment was made for the bond by New York draft payable in dollars. At this time the Fourth Liberty Loan 4¼% Bonds of 1933-1938 in coupon form, bearing the serial numbers the final digit of which was 9, 0, or 1, such serial numbers, in the case of permanent coupon bonds, prefixed by the distinguishing letters J, K, or A, respectively, and designated in Treasury Department Circular 501, as called for redemption on April 15, 1934, were not listed on any exchange but were occasionally available in the open market and selling at not in excess of their dollar face amount and interest accrued to the date of redemption as fixed in the notice of call embodied in the Treasury Department circular.

Plaintiff was not engaged or authorized to engage in any business in which gold coin or gold bullion was necessary for its operation.

At the time of purchase this bond had attached to it interest coupons maturing April 15, 1933, October 15, 1933, April 15, 1934, and October 15, 1934. The interest coupon covering the period April 15 to October 15, 1934, upon which this suit is based, is in evidence as plaintiff's exhibit 3. The bond to which the interest coupon in question was attached is one of a series of 4¼% gold bonds authorized by an Act of Congress approved September 24, 1917, as amended, and issued pursuant to Treasury Department [fol. 15] Circular 121 of September 28, 1918. Thic circular, which is in evidence as plaintiff's exhibit 5, provided in part as follows:

"The bonds will be dated October 24, 1918, and will bear interest from that date at the rate of four and one-quarter

percent per annum, payable on April 15 and October 15 in each year. The interest payable on April 15, 1919, will be for 173 days. The bonds will mature October 15, 1938, but the issue may be redeemed at the pleasure of the United States on and after October 15, 1933, in whole or in part, at par and accrued interest, on any interest day or days, on six months' notice given in such manner as the Secretary of the Treasury shall prescribe. In case of partial redemption the bonds to be redeemed will be determined by such method as may be prescribed by the Secretary of the Treasury. From the date of redemption designated in any such notice, interest on bonds called for redemption shall cease. The principal and interest of the bonds are payable in United States gold coin of the present standard of value."

2. October 11, 1933, the Acting Secretary of the Treasury, pursuant to the requirement of Circular 121, prescribed rules for the determination of the bonds to be called in partial redemption of the Fourth Liberty Loan 4¼% bonds of 1933-1938, and designated the manner of giving notice of the bonds so called for redemption. A copy of these rules is in evidence as joint exhibit A. On the same day the Acting Secretary of the Treasury issued a certificate of partial redemption of the Fourth Liberty Loan 4¼% bonds of 1933-1938, bearing serial numbers, the final digit of which was 9, 0, or 1, such serial numbers, in the case of permanent coupon bonds, prefixed by the distinguishing letters J, K, or A, respectively. This certificate is in evidence as joint exhibit B.

The following day, October 12, 1933, the Secretary of the Treasury issued a notice of call for partial redemption on April 15, 1934, of the Fourth Liberty Loan 4¼% gold bonds of 1933-1938, in which the bond in controversy was included. This notice of call is in evidence as joint exhibit C. This call for redemption stated, so far as material here, as follows:

"Pursuant to the provision for redemption contained in the bonds and in Treasury Department Circular No. 121, [fol. 16] dated September 28, 1918, under which the bonds were originally issued, all outstanding Fourth Liberty Loan 4¼ percent bonds of 1933-38, hereinafter referred to as Fourth 4¼'s, bearing the serial numbers which have been

determined by lot in the manner prescribed by the Secretary of the Treasury, are called for redemption on April 15, 1934. * * *

"Holders of Fourth 4¼'s are offered the privilege, for a limited period, beginning October 16, 1933, of exchanging all or part of their bonds (whether called or uncalled) for a new issue of 10-12 year Treasury bonds, dated October 15, 1933, and bearing interest from that date at the rate of 4¼ percent per annum until October 15, 1934, and thereafter at the rate of 3¼ percent per annum."

3. March 11, 1935, plaintiff presented the bond with the coupons for the six-months periods ending on and before October 15, 1934, detached, to the Treasurer of the United States and demanded the redemption of the bond by the payment of 50 gold dollars, each containing 25.8 grains of gold, .9 fine. At the time of this demand the Treasurer refused payment of the bond in gold, but the defendant was ready and willing to make full payment at par in coin or currency of the United States legal tender. Plaintiff, thereupon, refused to accept payment for the bond at par in legal-tender currency and retained the bond. Thereafter, on the same date, plaintiff presented the interest coupon for the six-months period ending October 15, 1934, to the Treasurer of the United States and demanded payment therefor in the sum of $1.07, either in gold coin or legal-tender currency. The Treasurer refused payment on the ground that the bond had been called for redemption on April 15, 1934.

4. The plaintiff on March 11, 1935, held no license authorizing it to receive or hold gold coin or gold bullion. It owned no Government bond containing a gold clause on June 5, 1933, October 12, 1933, April 15, 1934, or October 15, 1934.

[fol. 17] CONCLUSION OF LAW

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover, and its petition is therefore dismissed.

Judgment is rendered against plaintiff for the cost of printing the record herein, the amount thereof to be entered by the clerk and collected by him according to law.

OPINION

LITTLETON, Judge, *delivered the opinion of the court:*

The question presented in this case is whether the interest coupon upon which this suit is based covering the period April 15 to October 15, 1934, is an obligation of the United States upon which this action can be maintained, in view of the terms of the Liberty bond obligation and notice of call for redemption on April 15, 1934.

Plaintiff contends (1) that the provisions of the bond and circular with respect to payment of gold are valid, notwithstanding the joint resolution of Congress of June 5, 1933, and the Gold Reserve Act of January 30, 1934; (2) that the lack of remedy found to exist in Perry v. United States, 294 U. S. 330, is not material in this case, inasmuch as plaintiff is not suing for gold, and is not seeking damages for failure to pay gold, but is claiming only that the Government was without authority to call the bonds in advance of maturity unless it tendered gold or its equivalent; (3) that the failure of the Government to pay this bond in gold when presented March 11, 1935, invalidated the call; that the condition upon which interest was to cease was that six months' notice be given and that the bonds be redeemed when presented, in United States gold coin of the former standard of value, and that, inasmuch as this condition was not fulfilled, interest did not cease; (4) that the action of Congress in refusing to permit the payment of gold coin and attempting to invalidate the Government's obligation to pay in such coin, coupled with the refusal of the Treasurer to pay this bond and former coupons in gold coin constituted a repudiation of the Govern- [fol. 18] ment's obligation on the bond and that, while such repudiation continued, the Government could not assert an option given it against the plaintiff to redeem the bond; (5) that the call issued in Treasury Department Circular 501 on October 12, 1933, was void ab initio, for the reason that in view of the action of Congress and the President in requiring all gold to be delivered to the United States, which action was taken prior to June 1933, and in view of the joint resolution of June 5, 1933, the call was an attempt to call these bonds by the payment of currency.

Plaintiff seeks to recover interest and its case rests upon a contractual obligation. At the outset it should be noted

that the United States is not liable for interest, except by its express consent by statute or contract, and that its obligation to pay interest in any case is limited strictly to the terms of the statute or contract providing therefor. Plaintiff's bond stated that it was issued pursuant to Treasury Department Circular 121 of September 28, 1918, and incorporated by reference the provisions of that circular. The bond and this circular therefore constitute the Government's contract. In this circular, under the heading "Rate of Interest, Date of Bonds, Maturity and Redemption" is contained the following provision:

"The bonds will mature October 15, 1938, but the issue may be redeemed at the pleasure of the United States on and after October 15, 1933, in whole or in part, at par and accrued interest, on any interest day or days on six months' notice given in such manner as the Secretary of the Treasury shall prescribe * * *. *From the date of redemption designated in any such notice interest on bonds called for redemption shall cease.*" [Italics ours.]

In addition, the Fourth Liberty bond purchased by plaintiff, to which the interest coupon involved in this case was attached, provided that "The United States of America for value received promises * * * to pay interest on said principal sum * * * *until the principal hereof shall be payable.*" [Italics ours.]

[fol. 19] It seems clear to us from the above that by the agreement of the parties the obligation of the defendant to pay interest on the bond ceased upon the issuance of notice of call and passage of time to the date designated for redemption in such notice. It is agreed that a notice of call was issued and a date fixed for redemption prior to the period for which plaintiff is now demanding interest. Moreover, the contract between the parties did not require that there be a redemption of the bond in order that interest on the obligation as such should terminate. It required only the giving of notice of call for redemption, which was admittedly done, and the arrival of the date specified in that notice. This fact and the provision of the bond itself that interest would run only until the principal of the bond should become payable distinguish the case of Sterling v. Watson Co., 241 Pa. 105, and Corbett, Executrix, v. McClintic Marshall Corp., 17 Del. Chan. 165, cited and relied upon by plaintiff.

The clause in the bond in question that the United States will pay interest on the principal of the bond "until the principal hereof shall be payable" clearly discloses that the interest obligation was to run only until the date designated for redemption, namely, when the principal became "payable." It cannot be denied that the principal was payable April 15, 1934. Plaintiff concedes that by virtue of the notice of call for redemption the principal of the bond became payable, but contends that the bond holder also had the option of availing itself of the terms of the call and suing for immediate payment. But the word "payable" does not mean paid.

In Morgan v. United States, 113 U. S. 476, it was held that the purchase of bonds of the United States after the redemption date was not, under the circumstances, a purchase of discredited paper within the usual rules relating to negotiable instruments, and the court said "The legal effect of the call undoubtedly is to entitle the holder to demand payment at its maturity and, even though not demanded to exonerate the Government from liability for interest accruing after that date, * * * the obligation to pay interest ceases because that is the contract to which the holder of the bond has consented, and to which he sub- [fol. 20] mits." See also Perry v. United States, supra; Compania de Inversiones Internacionales v. Mortgage Bank of Finland, 269 N. Y. 22 (certiorari denied); Spaulding v. Lord, 19 Wisc. 533.

The interest coupon sued upon also conditioned the right of the holder to demand interest, upon whether the bond had been called for redemption. This coupon provided as follows: "The United States of America will pay to bearer on October 15, 1934, at the Treasury Department, Washington, or at a designated agency, $1.07, being six months' interest then due on $50, 4th Liberty Loan 4¼% Gold Bond of 1933-1938, unless called for previous redemption."

It seems clear from what has been said above that in order for plaintiff to recover it would be necessary for the court to ignore the specific and positive provisions of the contract relating to the matter of interest. But plaintiff insists that because the principal of the bond was not paid in gold and that inasmuch as the defendant, at the time the call was issued, intended to redeem the bond in coin or currency of the United States, the call was void and of no effect

and that the obligation of the United States to pay interest continued until maturity of the bond. With this we cannot agree. The nature of the call conformed to the requirements of the statute and of the bond, and the action taken by the United States on the date when the principal of the bond became payable under the call, or when it was presented for redemption, which plaintiff claims was not in accordance with the obligation assumed by the United States in the bond, may have given rise to a cause of action with respect to the principal or accrued interest (Perry v. United States, supra; Nortz v. United States, 294 U. S. 317, 328); but any failure of the United States to comply with the contract with respect to payment of the principal of the bond in gold did not change or modify the specific terms of the agreement with respect to interest subsequent to April 15, 1934. Morgan v. United States, supra.

In Machen v. United States, decided June 20, 1936, the District Court for the District of Maryland, denied interest in a case similar to the one at bar, holding that the United States had an unqualified right to call the bond for redemption in accordance with the provision in the bond [fol. 21] to which the plaintiff must be deemed to have agreed upon its purchase, and that if the plaintiff considered himself injured, by the Government's failure to redeem by payment in gold, his only remedy was to bring suit upon the principal obligation of the bond.

In a proper case a plaintiff might be entitled to demand interest at the legal rate rather than the contract rate after a bond has been called for redemption and after the principal has become payable. Spaulding v. Lord, supra. But this suit is not and cannot be a suit for legal interest for the reason that an obligation of the United States to pay interest can only arise by its own express consent and contract. United States v. North Carolina, 136 U. S. 211.

Under the terms of the contract involved in this case and upon the facts of record, we are of opinion that plaintiff is not entitled to recover, and its petition is dismissed. It is so ordered.

Whaley, Judge; Williams, Judge; Green, Judge; and Booth, Chief Justice, concur.

[fol. 22] VII. JUDGMENT

At a Court of Claims held in the City of Washington on 9th day of November A. D., 1936, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law, that the plaintiff is not entitled to recover.

It is Therefore Adjudged and Ordered that the plaintiff's petition be and the same is hereby dismissed.

VIII. PROCEEDINGS AFTER ENTRY OF JUDGMENT

On January 8, 1937, the plaintiff filed a motion for a new trial.

On January 8, 1937, the defendant filed a motion to amend the special findings of fact.

On February 8, 1937, the court entered the following order on said motions:

Order

It is Ordered this 8th day of February, 1937, that the plaintiff's motion for new trial and the defendant's motion to amend the special findings of fact, be and the same are hereby overruled.

[fol. 23] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 41,501. Court of Claims. Term No. 961. The Dixie Terminal Company, petitioner, vs. The United States. Petition for a writ of certiorari and exhibit thereto. Filed May 7, 1937. Term No. 961, O. T., 1936.

[fol. 24] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—*Filed June 1, 1937*

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.